

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARNET KELSOE and U.S. POSTAL SERVICE,
POST OFFICE, Oklahoma City, OK

*Docket No. 99-2239; Submitted on the Record;
Issued September 27, 2000*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has more than a 13 percent permanent impairment to her left arm; and (2) whether the Office of Workers' Compensation Programs used the proper pay rate with respect to appellant's schedule award.

In the present case, appellant filed a claim on August 1, 1996, alleging that she sustained a left shoulder injury as a result of carrying a mailbag during her federal employment. She indicated that she first became aware of the injury on January 2, 1996. The Office accepted the claim for left shoulder impingement syndrome. The Board notes that appellant has a prior claim for injury to her right shoulder.

By decision dated November 2, 1998, the Office issued a schedule award for a 13 percent permanent impairment to the left arm. Appellant has requested review of this decision, in particular the pay rate used in calculating the schedule award.¹

The Board has reviewed the record and finds that the Office properly determined that appellant has established no greater than a 13 percent permanent impairment to the left arm.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.² Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal

¹ The record contains a June 2, 1999 decision with respect to a wage-earning capacity, but appellant has not requested review of this decision.

² 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.304(b).

justice for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.³

In this case, the attending physician, Dr. Mitchell Wolf, a family practitioner, provided range of motion results for the left shoulder as follows: flexion 90 degrees; extension 40 degrees; abduction 90 degrees; adduction 30 degrees; internal rotation 90 degrees; and external rotation 30 degrees. Under the A.M.A., *Guides*, the impairment for flexion is six percent, extension is one percent, abduction four percent, adduction one percent, internal rotation has no impairment and for external rotation the impairment is one percent.⁴ While Dr. Wolf assigned a 2 percent impairment for external rotation, the A.M.A., *Guides* establish a 1 percent impairment for 30 degrees of external rotation. An Office medical adviser properly indicated in an October 20, 1998 report that appellant's impairment was 13 percent for the left arm.

With respect to pay rate, the Board finds that the Office improperly used a pay rate associated with the right shoulder injury.

The November 2, 1998 schedule award indicates that appellant's weekly pay rate was \$578.58 per week. This represents the pay rate on July 15, 1992, the date disability began for the right shoulder injury that appellant had previously filed. Although the two separate claims had been combined for administrative purposes, the left shoulder injury represents a new injury. Appellant alleged that carrying a mailbag on her left shoulder caused her injury, and the Office accepted a left shoulder impingement syndrome.

Section 8101(4) of the Act defines "monthly pay" for purposes of computing compensation benefits as "the monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater."⁵ This section applies to compensation benefits paid pursuant to a schedule award.⁶

Where an injury is sustained over a period of time, as in this case, the date of injury is the date of last exposure to the employment factors causing the injury.⁷ In this case, appellant was clearly alleging that employment factors after July 15, 1992 contributed to her left shoulder injury. Her narrative statement accompanying the claim indicates that she attributed her left shoulder injury to carrying mail from 1992 to 1996. On remand, the Office should make a determination as to the correct pay rate for compensation purposes with respect to the left shoulder injury. After such further development as the Office deems necessary, it should issue an appropriate decision with respect to appellant's schedule award.

³ A. George Lampo, 45 ECAB 441 (1994).

⁴ A.M.A., *Guides*, 43-45, Figures 38, 41, 44.

⁵ 5 U.S.C. § 8101(4).

⁶ Sherron A. Roberts, 47 ECAB 617 (1996).

⁷ *Id.*

The decision of the Office of Workers' Compensation Programs dated November 2, 1998 is set aside, and the case is remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC
September 27, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member